

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA

KIMOTHY ROSS,	)	
	)	
Petitioner,	)	
vs.	)	2:06-cv-006-RLY-WGH
	)	
MARK A. BEZY, Warden,	)	
	)	
Respondent.	)	


E N T R Y

The petition of Kimothy Ross for a writ of habeas corpus was denied in a Judgment entered on the clerk's docket on March 23, 2006. The court concluded in its accompanying Entry that (1) the Amended Judgment issued by the sentencing court on July 15, 1988, showed that the original sentence of 360 months is the only executed term which was imposed and which is in effect, and (2) there were no circumstances present which permitted Ross to use 28 U.S.C. § 2241(c)(3) to challenge the validity of the conviction or sentence imposed by the trial court (the United States District Court for the Eastern District of Michigan). The petitioner's post-judgment motion was filed within ten (10) working days from the entry of Judgment on the clerk's docket, and hence is treated as motion to alter or amend judgment pursuant to Rule 59(e) of the *Federal Rules of Civil Procedure*. *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Wisconsin*, 957 F.2d 515, 517 (7th Cir. 1992).

"Altering or amending a judgment under Rule 59(e) is permissible when there is newly discovered evidence or there has been a manifest error of law or fact." *Harrington v. City of Chicago*, 433 F.3d 542, 546 (7th Cir. 2006) (citing *Bordelon v. Chicago Sch. Reform Bd. of Trs.*, 233 F.3d 524, 529 (7th Cir. 2000)). There has been no showing of such an error in this case. Thus, the court neither overlooked a viable claim nor incorrectly evaluated the claim which was presented. Additionally, the petitioner does not argue that his motion rests on newly discovered evidence. Treating the post-judgment filing as a motion to alter or amend judgment, therefore, the motion is **denied**.

IT IS SO ORDERED.

Date: 04/21/2006

  
RICHARD L. YOUNG, JUDGE  
United States District Court  
Southern District of Indiana

Distribution:

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